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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/12/2022

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.RC(MD)No.1093 of 2022

and

Cr1.MP(MD)No.13955 of 2022

Murugan

: Petitioner/A2

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Kumbakonam.

(Crime No.03 of 2020)

: Respondent/Complainant

Prayer:- This Criminal Revision has been filed under section 397 r/w 401 r/w 482 of the Criminal Procedure Code r/w section 45 of the Indian Evidence Act to call for the records pertaining to the order passed in Cr.MP No.1220 of 2022 dated 15/10/2022 in SSC No.64 of 2020 on the file of the Special Court for Exclusive Trial of POCSO Act cases, Thanjavur and set aside the same.

For Petitioner : Mr.R.Prakash

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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O R D E R

This criminal revision has been filed seeking to set aside the order passed in Cr.MP No.1220 of 2022, dated 15/10/2022 in SSC No.64 of 2020 on the file of the Special Court for Exclusive Trial of POCSO Act cases, Thanjavur.

2.The facts in brief:-

The petitioner is facing the charges under sections 5(i)(ii), 5(l), 6 of POCSO Act, 2012 @ 3(a) r/w 5(j)(ii), 5(l), 4, 5(n) r/w 6 of POCSO Act 2012 before the trial court. He is the father of the victim girl.

3.During the course of investigation, DNA profiling was undertaken and due to the non-availability of the evidence from the foetus of the victim girl, the blood samples of the accused were collected. Only on the basis of the above said blood sample, report was submitted stating that he is the biological father of the foetus.



4.The petitioner filed a petition for retesting the foetus before the trial court and that was dismissed stating that it is a belated one and proper investigation has been undertaken by the expert and there is no necessity for re-testing the foetus.

5.Now challenging the above said order, this revision has been preferred.

6.The learned counsel appearing for the petitioner insisted that only blood sample of the petitioner as well as the victim girl has been taken and no effort was taken by the Investigating Officer to take the sample from the foetus for the purpose of DNA profiling. Since the petitioner happens to be the father of the victim, naturally the blood samples are matching. This is the evidence proving that this petitioner is the biological father of the foetus of the victim.

7.But the correctness of the submission has been disputed by the learned Additional Public Prosecutor stating that only sample has been taken from the foetus and that has been compared with the blood sample of the accused and it was found tallied.



8. Now the only ground that has been made by the petitioner to the effect that the outer surface of the foetus became damaged and only inner part has found to be intact. So that ground was not accepted by the trial court. I find absolutely no illegality or irregularity in the above said order. As per the information furnished by the expert, the foetus of the victim removed, on 13/03/2022 and after that, it was sent to the Forensic Science Laboratory for examination and the expert was examined as PW17 before the trial court. She has stated in her evidence that as per the DNA profiling test, that was undertaken, this petitioner was found to be the biological father of the foetus and according to her, the possibility is 99.999999998%. So this is questioned by the petitioner.

9. It appears that no cross examination was done by the accused. It has been stated by the petitioner that he has not cross examined. When that is being so, the contention on the part of the petitioner that the sample test was not properly undertaken is completely out of place and cannot be accepted at all. The reason for non cross examination on the part of the expert is not



foetus was in damaged condition. That itself is not sufficient for retest. When it is admitted by her that petitioner fetus inner portion was found to be normal, no retesting is required. So, there is no basis for the petitioner to say that the above said DNA profiling is not proper in nature. Had it been found to be defective, test would not have been undertaken by the expert. So for the reasons stated above, I find no reason to entertain this revision.

12.In the result, this criminal revision is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

02/12/2022

Index:Yes/No
Internet:Yes/No
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To,



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- 1.The Special Court for
Exclusive Trial of POCSO Act
cases, Thanjavur.
- 2.The Inspector of Police,
All Women Police Station,
Kumbakonam.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G . ILANGO VAN , J



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Cr1.RC(MD)No.1093 of 2022

02/12/2022